

(G.C.P.)J 455 (5,00,000)-11.2001)

Spl-H.C.,A.S.,C.D.,78e

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE
Contempt Petition No.379 of 2004

Office Notes, Office Memoranda
of Coram, appearances, Court's
order or directions and
Registrar's order.

Court's or Judge's orders

Shri D.A.Joseph for David & Associates for
the petitioner.

Shri S.G.Surana for Respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 1st OCTOBER, 2004

P.C.

1. Heard the learned advocate for the
petitioner and the respondent No.4. The
learned advocate for the respondent No.4
states that the respondents have already
challenged the order dated 11th June, 2004
before the appellate Court and the appeal
has been admitted for final hearing. When
the learned advocate appearing for the
petitioner was asked as to why the fact that
the order dated 11th June, 2004 had been
subjected to appeal, has not been disclosed
in the petition, his answer to it was that
the learned advocate appearing in the
contempt petition is not appearing in the

appeal proceedings, and secondly that there is no stay granted by the lower appellate Court to the order dated 11th June, 2004. Undoubtedly, in the absence of stay by the appellate Court, it is obligatory on the part of the respondents to comply with the order dated 11th June, 2004. However, at the same time, when the party approaches the Court accusing the opposite parties i.e. the respondents of violation of the order passed by the lower appellate Court, and requesting for necessary action, on that count, it is necessary for the petitioner to disclose all the material facts in the petition. Merely because the two different advocates appear in the two different proceedings, that cannot enure to the benefit of the petitioner to suppress the material fact from the Court. A party who approaches the Court by suppressing the material fact is not entitled to get any discretionary relief from the Court. Having failed to disclose material fact, the petition for seeking action against the contemnors is liable to be dismissed in limini.

2. That apart, as regards the allegation of non-compliance of the

direction issued under the order dated 11th

June, 2004, apart from the vague allegation

for non-compliance of the said direction, there is nothing placed in that regard on record by the petitioner. It is the contention of the learned advocate for the petitioner that he is in possession of the photographs of the construction which is in progress. In case, the petitioner is in possession of the photographs of the said construction, one fails to understand as to why the petitioner has suppressed those photographs from the Court. This conduct of the petitioner does not deserve any discretionary relief in his favour. The fact that the petitioner can very well seek execution of the order dated 11th June, 2004 also cannot be ignored, and therefore, there is no case for invoking the powers for prosecuting the respondents for contempt of court. The contempt petition is, therefore, rejected.
